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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,134	08/20/2003	Anton Gaile	298-209	5331
28249 7590 12/17/2007 DILWORTH & BARRESE, LLP 333 EARLE OVINGTON BLVD. SUITE 702 UNIONDALE, NY 11553			EXAMINER NGUYEN, XUAN LAN T	
			ART UNIT 3683	PAPER NUMBER
			MAIL DATE 12/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/644,134

Applicant(s)

GAILE, ANTON

Examiner

Lan.Nguyen

Art Unit

3683

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 11-14, 16-18, 25 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) 16-18 and 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 11-14 and 27-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 October 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/6/07 has been entered.

Election/Restrictions

2. Upon further consideration, claims 16-18 and 25 are withdrawn from further consideration for pertaining to non-elected embodiment of species 2, figures 5-6. Claims 16 and 17 claim another coil spring; claims 18 and 25 claim an end-stop unit. Both of these claimed features pertain to figures 5-6.

Drawings

3. The drawings were received on 10/22/04. These drawings are not approved. In general, the drawings are of poor quality and are hard to see. Especially, the displacement indicator is not shown clearly where the displacement indicator calipers the conical portion. Also, the conical portion is very blurry and is hard to see the

claimed features as claimed in claim 3. Figures 3, 7, 8 and 9 comprise hand-written labels which make the drawings are hard to see since some of the labels run into the others. Also, please remove the dimensions in all the drawings since they introduce numerical references in the drawings that are not supported by the specification.

4. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because of the reasons stated above. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Specification

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 29-30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which

was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claimed "displacement indicator arranged therein to be moved substantially horizontally" and "such that during operation, said displacement indicator calipers a surface of said conically-tapering end of said lug" are non-enabled. Please note the drawing objection above. Since the drawings are poor quality and the specification does not provide many details to these claimed features, it is unknown to what these features look like.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-7, 11-14 and 27-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- In all the claims, please recite "a height sensor" or "a height regulator valve", but not both. It appears that Applicant is using two names for one valve which makes it very confusing.
- It is also noticed that Applicant is employing claimed terms that are not consistent with the specification. In fact, they are being used in a mixed up way which introduce confusion in the understanding of the claimed features. For example, in the specification, element 110 is called a piston space while element 42 is called a pressure space. In the claims, the piston space is being used to refer to element 42 while element 110 is being referred as a hydraulic cylinder piston

space. Another example, element 30 is referred to as the piston in the specification while in the claims, it is a sliding strut piston. While element 100 is the sliding piston in the specification and is a hydraulic cylinder piston in the claims. To make matters worse, element 200 is the hydraulic cylinder in the specification and not element 90 as recite in the claims. Applicant is urged to amend the claims to comprise terms that have proper antecedent basis in the specification.

- In claim 1, "connected or connectable", "can be" are considered to be indefinite. Which piston is being claimed?
- In claim 2, "exclusively or also" is considered to be indefinite. Which piston is being claimed?
- In claims 3 and 4, please note the drawing objection above. It is unclear how the conical portion adjusts the height of the strut piston.
- In claim 5, which cylinder and cylinder head are being claimed?
- In claim 11, "can be" is considered to be indefinite.
- In claim 12, "connected or connectable", "can be" are considered to be indefinite. Which piston is being claimed? Please ensure that the use of claimed terms such as "strut piston, strut cylinder, hydraulic cylinder piston, hydraulic cylinder" to be consistent. Also, "a cylinder piston space" should be --a strut cylinder piston space--.
- In claim 14, "can be" is considered to be indefinite.

- In claim 27, "can be" is considered to be indefinite. "whereby the strut piston or strut cylinder can be connected with the bogie and other of the strut piston and the strut cylinder with the body" should be --whereby the strut piston or strut cylinder is connected with the bogie and other of the strut piston and the strut cylinder is connected with the body--. Also, "a cylinder piston space" should be --a strut cylinder piston space--.
- In claim 28, "piston and cylinder" should be -- strut piston and strut cylinder --.
- In claim 29, "connected or connectable", "can be" are considered to be indefinite. "whereby the strut piston or strut cylinder can be connected with the bogie and other of the strut piston and the strut cylinder with the body" should be --whereby the strut piston or strut cylinder is connected with the bogie and other of the strut piston and the strut cylinder is connected with the body--. Also, "a cylinder piston space" should be --a strut cylinder piston space--.
- In claim 30, "cylinder head" should be --strut cylinder head--.

Applicant is urged to carefully review the claims and to correct the deficiencies. Due to these numerous deficiencies, the claims are being examined as best understood.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent

granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-3, 5-7, 12, 27 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Teichmann et al. (US6637348).

Re: claim 27, Teichmann shows a spring element in figure 6, as in the present invention, with a hydropneumatic strut to be positioned between a bogie 2 and a body 3 of a rail car, with the strut enclosing a sliding strut piston in a strut cylinder as marked below, whereby the strut piston or strut cylinder can be connected with the bogie and other of the strut piston and the strut cylinder can be connected with the body, and a cylinder piston space 5 is connected with a hydraulic accumulator as marked below, wherein the spring element comprises an auxiliary spring 6 which is concentrically arranged with the strut, encloses the strut cylinder, and is preloaded by a hydraulic cylinder 8b which is connected with the strut cylinder piston space 5.

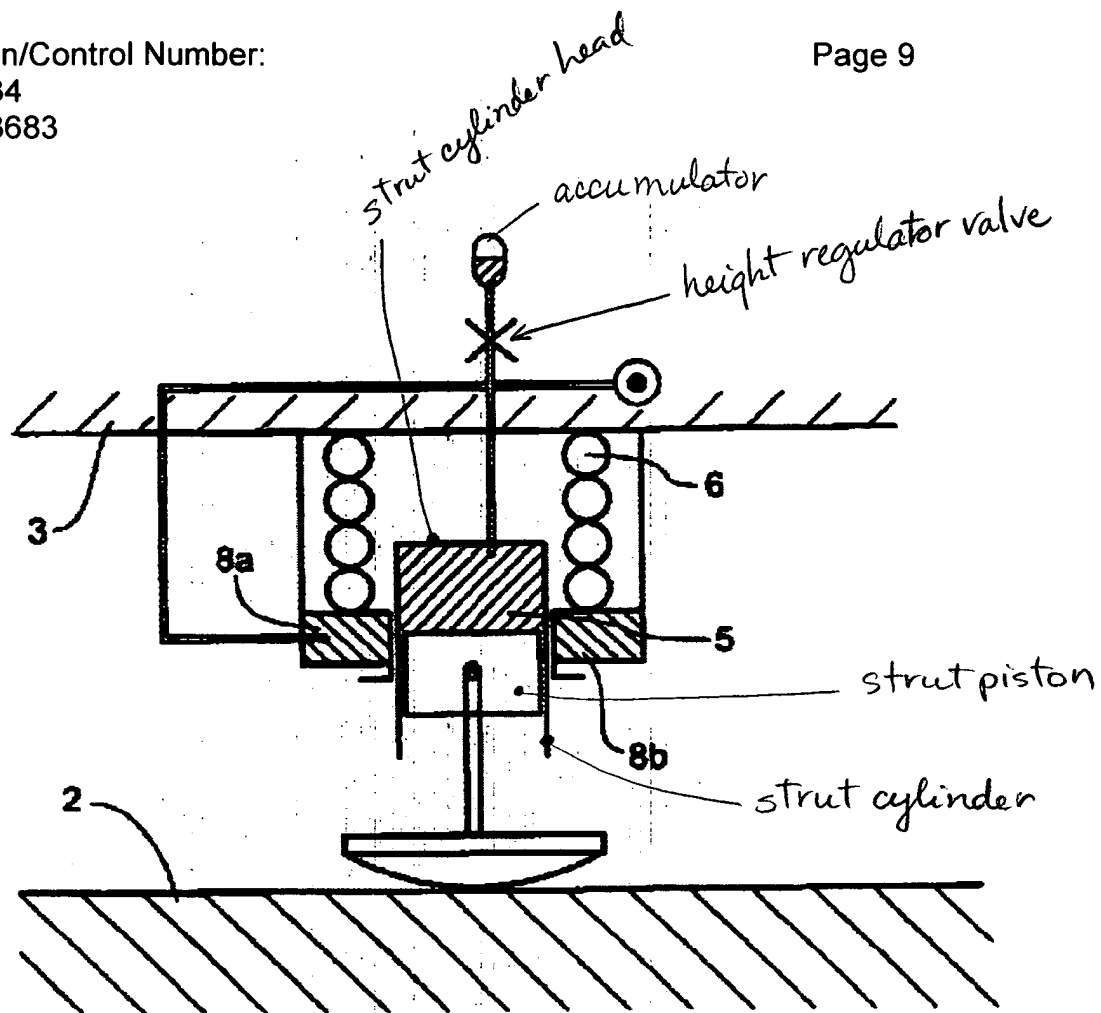


FIG. 6

Re: claims 1-3, Teichmann shows the hydropneumatic strut has a hydraulic height regulator valve as marked above connected with a feedback loop, by means of which the position of the piston in the cylinder can be adjusted or determined.

Re: claims 5 and 28, Teichmann shows a bore extending in a longitudinal direction of the cylinder is positioned in a cylinder head, and the mechanical feedback loop of the a height regulator valve is located in a bore extending perpendicular thereto in the cylinder head, as shown in the figure 6.

Re: claims 6 and 7, Teichmann shows the auxiliary spring as claimed.

Re: claim 12, Teichmann shows a spring element in figure 6, as in the present invention, with a hydropneumatic strut to be positioned between a bogie 2 and a body 3 of a rail car, with the strut enclosing a sliding strut piston in a strut cylinder as marked above, whereby one of the strut piston or the strut cylinder can be connected with the bogie and the other of the strut piston and strut cylinder can be connected with the body, and a cylinder piston space 5 is connected with a hydraulic accumulator as marked above, wherein the hydropneumatic strut has a hydraulic height regulator valve as marked above, connected with a feedback loop, by means of which the position of the strut piston in the strut cylinder can be adjusted or determined, wherein the spring element includes an adjustment unit 8b, aligned with the strut, that can be height adjusted in the direction of movement of the strut and which is supported on the strut piston or strut cylinder, and wherein the adjustment unit includes a hydraulic cylinder piston 7b introduced into a hydraulic cylinder 7a, height-adjustable in the direction of movement of the strut, and supported on the strut piston or strut cylinder, as shown in figure 6.

Allowable Subject Matter

12. Claims 29-30 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 1st and 2nd paragraph and the drawing objections, set forth in this Office action.

13. Claims 4 and 11-14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph and the drawing objections, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

14. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lan Nguyen whose telephone number is (571) 272-7121. The examiner can normally be reached on Monday through Friday, 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi can be reached on (571) 272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Xuan Lan Nguyen/ 12/13/07
Primary Examiner
Art Unit 3683